IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.924 OF 2007
WITH
CRIMINAL APPLICATION NO.925 OF 2007
CRIMINAL APPLICATION NO.926 OF 2007
CRIMINAL APPLICATION NO.927 OF 2007
CRIMINAL APPLICATION NO.928 OF 2007
CRIMINAL APPLICATION NO.929 OF 2007
CRIMINAL APPLICATION NO.930 OF 2007
CRIMINAL APPLICATION NO.931 OF 2007
CRIMINAL APPLICATION NO.1570 OF 2007
CRIMINAL APPLICATION NO.1571 OF 2007
CRIMINAL APPLICATION NO.1572 OF 2007
CRIMINAL APPLICATION NO.1573 OF 2007

Pahilaj Kimatrai. ..Applicant.
Vs.
Bhushan R. Punjabi and anr. ..Respondents.
(Respondents in C.A.Nos.924 to 931/2007)

Anthony Lawrence and anr. ..Respondents.
(Respondents in C.A.Nos.1570 to 1573/2007)

Mr.M.K.Kicharekar,Advocate for the Applicant in all the matters.

Mr.D.R.More, APP. in Application No.924/2007 and 930/2007.

Mr.S.R.Shinde, APP. in Application No.925/2007.

Mr.A.S.Shitole, APP. in Application No.926 and 1570 of 2007.

Mr.D.P.Adsule, APP. in Application Nos.927 and 1571 of 2007.

Ms. S.V.Gajare, APP. in Application No.928, 929 and 1573 of 2007.

Mr.P.A.Pol, APP. in Application No.931 and 1572 of 2007.

CORAM : B.H.MARLAPALLE, J.
DATE : 23rd October, 2007.

P.C.

1. Heard Mr. Kocharekar, the learned counsel for the applicants. These applications have been filed by the same applicant and raise a common issue regarding the challenge to the order of acquittal from the charge under Section-138 of the Negotiable Instruments Act, 1881. The Trial Court held in all the complaints filed by the present applicant that a) the accused had successfully shown and proved that the complainant did not have any enforceable claim against him as the debt was time barred and b) money advanced to the accused by the complainant did not make out a enforceable claim as the complainant was the money lendor. In all these applications if any of the two issues are upheld by this court there would be no case to grant leave to appeal under Section-378(4) of the Criminal Procedure Code. These are the common issues involved in all these applications and hence, they are being decided by this common order.

2. As per the applicant-complainant the accused had obtained a loan from Suresh Bhagwandas (in the first case) of Rs.45,000/- on 18.10.1991 and this amount was advanced by cheques. The first cheque was of Rs.25,000/- and the second cheque was of Rs.20,000/. The complainant further claims that the accused had issued two bills of exchange on 18.10.1991 and 15.1.1992

respectively for a sum of Rs.25,000/- and Rs.20,000/- and these bills of exchange were executed and signed by the accused and accepted as guarantor by the wife of the accused. It is further stated that to discharge the liability of repayment of the loan, the accused had issued two cheques one for Rs.20,000/- on 5.5.1999 and other for Rs.30,000/- dated 8.5.1999. Both these cheques were dishonoured and therefore, he issued statutory demand notice but the accused did not come forward to pay the amount of Rs.45,000/- within 15-days from the receipt of the notice. Consequently, the complainant filed the subject complaint. The accused has raised defence that the complainant had no legally enforceable claim against him on two counts namely a) that the cheques were issued against the time barred loan and b) the complainant was the Money Lendor as defined under the Bombay Money Lenders Act and he had prepared the bills of exchange which could not relied upon to support existence of any debt or other legal liability. Both these defences have been upheld by the Trial Court.

3. Mr. Kocherekar, the learned counsel for the complainant has referred to the provisions of Section 25(3) of the Indian Contract Act,1872 as well as the decisions of this court in the case of **Mr. Narendra V. Kanekar Vs. The Bardez Taluka Co.op. Housing Mortgage**

Society Ltd. and anr. reported in 2006(3) ALL MR 673 and Purshottam s/o. Maniklal Gandhi Vs. Manohar K. Deshmukh and anr. reported in 2007 ALL MR (Cri) 332 and submitted that so long as there existed a contract executed between the parties, even the time barred loan could be claimed by filing recovery suit and the issue of limitation will not come in the way in view of the specific provisions of Section-25(3) of the Indian Contract Act. Mr. Kocherekar placed reliance on the bills of exchange brought on record in the first case at Exh-A-1 and A-2. It is contended that as they were executed on 14.2.1991 and 9.4.1992 i.e. after the complainant had advanced loan to the accused and during the period of limitation of three years, the suit for recovery of loan amount can be filed at any time and therefore, the Trial Court committed an error in holding that it was a time barred loan.

4. If the documents at Exh.A-1 and A-2 are to be accepted as bills of exchange, there may be some force in the submissions of Mr. Kocherekar. The term bills of exchange has been defined in Section-3(1) of the Bills of Exchange Act,1882 as under.

> "A bill of exchange is an unconditional order in writing, addressed by one person to another signed by the person giving it, requiring the

> person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer".

Sub Section (2) of Section-3 clearly states that an instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

5. Mr. Kocherekar referred the provisions of Section-5 of the Bills of Exchange Act, 1882 as well as the decision in the case of **Punjab and Sind Bank Vs. Vinkar Sahakari Bank Ltd. and ors.** and more particularly Paragraph-7 therein and submitted that a bill of exchange could be drawn by and pay to the same person. Paragraph-8 of the said Judgment of the Apex Court reads as under.

> "The postulate in Section-5 of the Act that the Bill of Exchange shall contain an unconditional order directing " a certain person to pay need not necessarily refer to a third person. Such "a certain person" could as well be the bank which has drawn the bill of exchange. So long as the instrument is in the possession of a holder or a holder in due course such instrument

> would operate as a bill of exchange even if the drawer and the drawee happened to be the same person or banking institution".

In the instant case this analogy cannot be made applicable because it is the case of the complainant that the accused had issued bills of exchange in his favour and that was a contract within the meaning of Section 25(3) of the Indian Contract Act and consequently the period of limitation would not be applicable for filing recovery suit and hence, the complaint filed on account of dishonour of cheques could not be dismissed on the ground of limitation. The Trial Court has noted on perusal of the bills of exchange at Exh.A-1 and A-2 and pointed out that the name of the drawee was "Mathadi Enterprises" and the name of the payee was "for Mathadi Enterprises". These two instruments were not making a promise to the complainant and that he shall pay the amount beyond the date prescribed therein by a specific cheques bearing Nos.229939 and 279940. Therefore, the Trial Court was right in holding that these so called bills of exchange would not assist the complainant’s case on the point of limitation for the simple reason that the so called contract executed between the parties does not come within the meaning of Section 25(3) of the Indian Contract Act. The Trial Court was therefore, right in

holding that the complainant did not have a legally enforceable right against the applicant as the debt was time barred. I therefore, need not consider the second issue regarding the Bombay Money Lenders Act and as the order of acquittal is upheld on the very first ground, there is no occasion to reconsider the reasoning set out by the Trial Court in support of the order of acquittal under Section-138 of the Negotiable Instruments Act,1988. Hence, leave to appeal under Section-378(4) is hereby refused and consequently the all the applications stand rejected.

(B.H.MARLAPALLE, J.)